IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Kailash Singh
Vs.
Rambir Singh and anr.

S.B. CRIMINAL REVISION PETITION NO.536/2003
under Section 397 r/w. S.401 Cr.P.C.

Date of Order : 22/8/2006.

P R E S E N T

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Anil Upman for the petitioner.
Mr. Biri Singh for non-petitioner No.1.
Mr. Arun Sharma P.P. for the State.

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BY THE COURT :

This petition u/s.397 read with Section 401 Cr.P.C. is directed against the order dated 16/4/2003 passed by the learned Additional District & Sessions Judge, (Fast Track) No.3, Bharatpur holding non-petitioner No.1 Rambir Singh as a juvenile and directing the S.H.O. P.S. Sewar, District Bharatpur to submit separate charge-sheet against him for offences u/Ss.376, 306 and 457 I.P.C. in F.I.R. No.288/2002 P.S. Sewar and further directing non-petitioner No.1 to appear before the Juvenile Justice Board at Bharatpur on 8/5/2003.

The sole contention of the learned counsel for the petitioner is that the trial court has neither considered the provisions of Section 49 of the Act of 2000 nor provisions of Rule 22(5) of the the Rajasthan Juvenile Justice (Care and Protection of Children) Rules, 2002 (in short "Rules of 2002") and has wrongly held non-petitioner No.1 as juvenile without conducting due enquiry regarding his age.

Provisions of Section 49 of the Act of 2000 and Rule 22(5) of the Rules of 2002 read as under:-

> **"49.Presumption and determination of age.-**(1) Where it appears to a competent authority that person brought before it under any of the provisons of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.
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> (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent auhtority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person."

> **"22. Procedure to be followed by a Board in holding inquiries and the determination of age.–**
> (1) to (4) .....
> (5) In every case concerning a juvenile or a child, the Board shall either obtain–
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> (i) a birth certificate given by a corporation or a municipal authority, or
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> (ii) a date of birth certificate from the school first attended; or
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> (iii) matriculation or equivalent certificates, if available; and
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> (iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board,
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> Regarding his age, and, when passing orders in such shall, after taking into consideration such evidence as may be available or the medical opinion, as the case may be, record a finding in respect of his age."

Admittedly, no due enquiry as per the provisions of Section 49 of the Act of 2000 keeping in view the provisions of Rule 22(5) of the Rules of 2002 has been conducted about the age of non-petitioner No.1. Section 6(2) of the Act of 2000 provides that powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when

the proceeding comes before them in appeal, revisoin or otherwise.

It appears that the matter is pending before the Court of learned Additional District and Sessions Judge (Fast Track) No.3, Bharatpur. Therefore, in view of Section 6(2) of the Act of 2000 an enquiry with regard to the age of non-petitioner No.1 may also be conducted by the said court.

In the result, this petition under Section 397 read with 401 Cr.P.C. is allowed and the order dated 16/4/2003 passed by the learned Additional District & Sessions Judge, (Fast Track) No.3, Bharatpur is set-aside. The case is remitted to the aforesaid court with the direction to conduct proper and due enquiry as per the provisions of Section 49 read with S.6(2) of the Act of 2000 keeping in view the provisions of Rule 22(5) of the Rules of 2002. The enquiry shall be conducted within a period of one month from the date of filing the certified copy of the order before the court.

(HARBANS LAL), J.

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